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**DECLARATION OF COVENANTS, CONDITIONS, AND  
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**DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS FOR HAWKS BAY SUBDIVISION**

WHEREAS, the undersigned (hereafter "Grantor") is the owner of all that certain real estate situated in Valley County, Idaho more particularly described as Hawks Bay Subdivision (hereafter referred to as the "Subdivision"), pursuant to that certain plat recorded on the 29 day of March, 2005, as Instrument No. 293884, in Book 10 of Plats at Page 4, records of Valley County, Idaho (the "Plat"); and,

Whereas, it is the desire and intent of the Grantor to create a residential community in which certain standards shall be established for the mutual protection of all residents, with due regard for the protection and preservation of the environment; and,

Whereas, the covenants, conditions, and restrictions established in this Declaration are intended to serve such objectives;

NOW, THEREFORE, Grantor hereby declares that all property in the Subdivision (as herein defined) is and shall be held, conveyed, encumbered, leased, and used subject to the following uniform covenants, conditions, and restrictions in furtherance of a plan for the subdivision, improvement, and sale of said property, and to enhance the value, desirability, and attractiveness of such property. The restrictions set forth herein shall run with the real property included within the Subdivision and shall be binding upon all persons having or acquiring any interest in such real property or any part thereof; shall inure to the benefit of every portion of such real property and any interest therein; and shall inure to the benefit of and shall be binding upon Grantor, and its successors in interest, and may be enforced by Grantor and by any Owner or such Owner's successor in interest. Changes and modifications of this Declaration may be made by the unanimous agreement of all Owners of interest at the time of said change or modification.

**ARTICLE I – DEFINITIONS**

As used in this Declaration, unless the context otherwise specifies or requires, the following words and phrases shall be defined as follows:

- 1.1 Articles shall mean the Articles of Incorporation of the Association.
- 1.2 ACC shall mean the Architectural Control Committee for Hawks Bay Subdivision.
- 1.3 Assessments shall mean those payments required of Owners who are Association Members, including Regular, Special and Limited Assessments. The Association shall have the right to require assessments from its respective Members.
- 1.4 Association shall mean any Idaho nonprofit corporation, or its successors, organized and established by Grantor to exercise the powers and to carry out the duties set forth in this Declaration. Grantor shall have the power, in Grantor's discretion, to name the Association the

“Hawks Bay Homeowners Association, Inc.,” or any similar name which fairly reflects its purpose.

1.5 Board shall mean the duly qualified Board of Directors, or other governing board or individual, if applicable, of the Association.

1.6 Common Areas shall mean any and all parcels of Common Area, which may include, without limitation, all such parcels that are designated as private streets or drives, parking areas or drives, common open space, common landscaped areas, storm water and/or drainage facilities, Water System (defined in Article II below), common open space, storage facilities, recreational facilities, and any and all other amenities and facilities. Common Area may be established from time to time by Grantor on any portion of the Property by describing such area on a recorded Plat, by granting or reserving Common Area in a deed or other similar instrument, or by designating Common Area as such in this Declaration. In addition, the Association, if so specified in a supplemental declaration, may acquire any other real or personal property the Association deems necessary and/or beneficial to its Members. The Common Area may include easement and/or license rights.

1.7 Declaration shall mean this instrument as it may be amended from time to time.

1.8 Improvements shall mean all structures and appurtenances thereto of all kinds and types, including, but not limited to: buildings, roads, driveways, sidewalks, walkways, walls, fences, screens, landscaping, poles, signs, lighting and water system. Improvements shall not include those items which are located totally on the interior of a building and cannot be readily observed when outside thereof.

1.9 Limited Assessment shall mean a charge against a particular Owner, and such Owner's Lot, directly attributable to such Owner, equal to the cost incurred by the Association in connection with corrective action performed pursuant to the provisions of this Declaration, including, without limitation, damage to any Common Area or the failure of an Owner to keep such Owner's Lot and/or Improvements in proper repair, and including interest thereon as provided in this Declaration.

1.10 Lot shall mean an officially designated and numbered lot on the official plat of the Subdivision.

1.11 Member shall mean each Owner holding a membership in the Association, including Grantor.

1.12 Occupant shall mean any resident or occupant of a Lot other than the Owner, including, without limitation, family members, guests, invitees and/or tenants.

1.13 Owner shall mean the record owner, whether one or more persons, including Grantor, holding fee simple interest of record to a Lot which is a part of the Property, and buyers under executory contracts of sale, but excluding those persons having such interest merely as security

for the performance of an obligation, unless and until such person has acquired fee simple title pursuant to foreclosure or other proceedings.

1.14 Regular Assessment shall mean the portion of the cost of designing, constructing, maintaining, improving, repairing, managing and/or operating all Common Area, including all Improvements located thereon, and the other costs and expenses incurred to conduct the business and affairs of the Association that is levied against the Lot of each Owner by the Association, pursuant to the terms of this Declaration.

1.15 Special Assessment shall mean that portion of the cost of the capital improvements or replacements, equipment purchases and/or shortages in Regular Assessments that are authorized to be paid to the Association pursuant to the provisions of this Declaration.

1.16 Subdivision shall mean the plat of Hawks Bay Subdivision according to the official plat thereof now or hereafter on file in the office of the County Recorder of Valley County, Idaho.

## **ARTICLE II – GENERAL PROVISIONS**

By acceptance of any conveyance of any property in the Subdivision, the Grantee and Grantee's heirs, personal representatives, successors, and assigns covenant with the Grantor, and its successors and assigns, and with all other Grantees or subsequent owners of property in said Subdivision, that those covenants shall inure to the benefit of, and be binding upon, all such parties.

## **ARTICLE III – USE OF LAND**

The Grantee herein, and its heirs, successors, and assigns, shall use the above-described real property and estate for residential dwellings and/or garages. No building shall be erected or altered or placed or permitted to remain on any acreage other than residential structures and/or garage buildings and outbuildings. The design, exterior color schemes, and exterior building materials shall blend with the natural surroundings. This covenant does not, however, restrict the rental of the premises or improvement upon the premises.

## **ARTICLE IV – APPROVAL OF USE AND PLANS**

No building shall be erected, placed or altered on any Lot until the construction plans and specifications, and a plan showing the location of the structure, have been approved by the Architectural Control Committee, hereinafter designated, to quality for workmanship and materials, harmony of external design with existing structures, and location with respect to topography and finish grade elevations. No fence or wall shall be erected, placed or altered on any Lot nearer to any street than the minimum building setback line unless similarly approved.

As to all improvements, constructions, and alterations upon building sites, the Architectural Control Committee shall have the right to refuse to approve any design, plan, floor area, or color for such improvements, constructions or alterations which is not suitable or desirable in the opinion of a majority of said Committee, for any reason, aesthetic or otherwise,

and in so passing upon such design the Committee shall have the right to take under consideration the suitability of the proposed building or other structures, and the material of which it is to be built and to the exterior color scheme, to the site upon which it is proposed to be erected, the harmony thereof with the surroundings, and the effect of the building or other structure or alterations therein as planned on the outlook of the adjacent or neighboring property, and the effect or impairment that said structure will have on the view on surrounding building sites, and any and all factors which, in the opinion of a majority of the committee, shall affect the desirability or suitability of such proposed structure, improvement or alteration. Actual construction shall comply with the plans and specifications as approved and shall not commence prior to the receipt of the written approval, or expiration of the time period provided herein for the granting of such approval, by the Architectural Control Committee.

#### **ARTICLE V – ARCHITECTURAL CONTROL COMMITTEE**

5.1 Members of the Committee. The Architectural Control Committee (ACC) shall be comprised of at least two (2) persons, all whom shall be appointed as herein provided. A member of the ACC shall hold office until he has resigned or has been removed, but in any event, until said Member's successor has been appointed. Members of the ACC may be removed at any time, with or without cause.

5.2 Appointment-Removal. The members of the ACC shall be:

Michelle Bayse  
Walter R. Wanner  
Brian Wanner

So long as the Grantor owns any property within Hawks Bay Subdivision, the above named persons shall be empowered to appoint all members of the ACC. When the Grantor owns none of the property in Hawks Bay Subdivision, the Owners, by majority vote, shall elect the members of the ACC. Upon that event, the ACC members may also serve as officers of the homeowners association.

The ACC shall have the right, by a resolution in writing unanimously adopted, to designate one (1) of its members to take any action or perform any duties for and on behalf of the ACC. In the absence of such designation, the vote of any two (2) members of the ACC shall constitute an act of the ACC.

5.3 Non-Liability. Neither the ACC, nor any member thereof, or the Grantor, shall be liable to any Owner or any other person for any loss, damage or injury arising out of or connected with the performance by the ACC of its duties and responsibilities by reason of a mistake in judgment, negligence or nonfeasance in connection with the approval or disapproval or failure to approve an application. Every person who submits an application to the ACC for approval or plan and specifications agrees by submission of such application, and every Owner or Occupant of a Lot agrees, by acquiring title thereto or an interest therein, not to bring any action or suit against the ACC, or any member thereof, or the Grantor, to recover such damages.

5.4 Approval Required. No construction, alteration, modification, removal or destruction of any improvements of any nature whatsoever which materially alters the exterior appearance of the improvements on a Lot, shall be initiated or be permitted to continue or exist within Hawks Bay Subdivision without prior express written approval of the ACC.

5.5 Basis of Approval. Approval by the ACC shall be based, among other things upon, but shall not be limited to:

5.5.1 the adequacy of the Lot dimensions;

5.5.2 conformity and use of external design with neighboring improvements;

5.5.3 the effect of location and use of improvements on neighboring lots;

5.5.4 the relationship of the improvements to topography, grade, finished ground elevation, and landscaping of the Lot to that of neighboring lots;

5.5.5 the proper facing of the main elevation with respect to nearby streets, and,

5.5.6 the relation of the floor elevations to the flood elevations as defined by government entities.

5.6 Variations. The ACC may authorize variations from compliance with the requirements of any condition and restrictions contained in this Declaration, or any prior approval when, in the sole discretion of the ACC, circumstances such as topography, natural obstruction, aesthetics or environmental consideration or hardship may so require. Such a variance must be evidenced in writing, signed by at least two (2) members of the ACC. If a variance is granted as proved herein, no violation of this Declaration or prior approval shall be deemed to have occurred with respect to the matter for which the variance was granted.

## ARTICLE VI - ASSOCIATION

6.1 Organization of Association. The Association shall be initially organized by Grantor as an Idaho nonprofit corporation under the provisions of the Idaho Code relating to nonprofit corporations and shall be charged with the duties and invested with the powers prescribed by law and set forth in the Articles and Bylaws of the Association and this Declaration. Neither the Articles nor the Bylaws of the Association shall be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. Grantor grants to the Association a revocable, non-exclusive license to use the name "Hawks Bay" for the sole purpose of identifying the Association.

6.2 Members of Association. The Members shall be all Owners and no Owner, except Grantor, shall have more than one membership in the Association. Memberships in the Association shall be appurtenant to the Lot or other portion of the Property owned by such Owner. The memberships in the Association cannot be terminated and shall not be transferred, pledged, assigned or alienated in any way except upon the transfer of an Owner's title in and to



such Lot or other portion of the Property owned by such Owner, and then only to the transferee of such title. Any attempt to make a prohibited membership transfer shall be void and shall not be reflected on the books of the Association.

6.3 Voting. The Association will have two (2) classes of memberships.

6.3.1 Class A Members. Class A Members shall be all Owners except for Grantor. Class A Members shall be entitled to one (1) vote (fractional votes are not allowed) for each Lot owned by each such Owner for purposes of determining the number of votes of the Class A Members.

6.3.2 Class B Member. Grantor shall be the Class B Member, and shall be entitled to five (5) votes for each of the Lots owned by Grantor in Hawks Bay. The Class B Member shall cease to be a voting Member in the Association at the earlier of: (a) when Grantor holds no more than five (5) percent of the Lots in Hawks Bay; or (b) ten (10) years from the date the first Lot within Hawks Bay is conveyed by Grantor.

6.4 Board of Directors and Officers. The affairs of the Association shall be conducted and managed by such officers as the Board may elect or appoint, in accordance with the Articles and Bylaws of the Association, as the same may be amended from time to time. The Board shall be comprised of the Class A Members, including Grantor. For purposes of voting at Board meetings, each Class A Member, including Grantor, when acting in their capacity as Board members, shall have the same number of votes as provided further in Section 6.3 above. The Association may exercise any right or privilege given to the Association expressly by this Declaration, or as reasonably implied from or reasonably necessary to effectuate any such right or privilege.

6.5 Power and Duties of the Association.

6.5.1 Powers. The Association shall have all the powers of a nonprofit corporation organized under the nonprofit corporation laws of the State of Idaho subject only to such limitations upon the exercise of such powers as are expressly set forth in the Declaration, and to do and perform any and all acts which may be necessary, proper, and/or incidental to the proper management and operation of the Association's business, Common Area and the Association's other assets, including water and water rights, including groundwater and groundwater rights, ditch and ditch rights, and storage and storage rights, when and if received from Grantor, and the performance of the other responsibilities herein enumerated, including, without limitation:

6.5.1.1 Assessments. The power to levy Assessments on behalf of itself, on any Owner, or any portion of the Property, pursuant to the restrictions provided in this Declaration, and to enforce payment of such Assessments, all in accordance with the provisions of this Declaration. This power shall include the right of the Association to levy Assessments on any Owner or any portion of the Property to cover the operation and maintenance costs of Common Area.

6.5.1.2 Right of Enforcement. The Association shall be the primary entity responsible for enforcement of this Declaration. The power and authority from time to time in its own name, on its own behalf, or on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Declaration, and to enforce by injunction or otherwise, all provisions hereof. The Association, after reasonable notice to the offender and/or to the Owner, may remove any Improvement constructed, reconstructed, refinished, removed, added, altered or maintained in violation of this Declaration and/or the Design Guidelines, and the Owner of the Improvements shall immediately reimburse the Association for all expenses incurred with such removal. Each violation of this Declaration and the Design Guidelines is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed for such violation by law or equity against an Owner shall be applicable.

6.5.1.3 Delegation of Powers. The Association shall have the authority to delegate its power and duties to committees, officers, employees, or to any person to act as manager for the maintenance, repair, replacement and operation of any Common Area. The Association and the members of the Association shall not be liable for any omission or improper exercise by the manager of any such duty or power so delegate. All contracts for management of any Common Area shall be for a term not exceeding one (1) year, shall be terminable on thirty (30) days notice with or without cause, and shall be subject to review by the Board.

6.5.1.4 Association Rules. The Association shall be the primary entity responsible for enforcement of the Association rules and has the power to adopt, amend and repeal such rules as the Association deems reasonable by majority vote of the Board. The Association may govern the use of Common Area by Owners, their families, invitees, licensees, lessees, or contract purchasers, including, without limitation, the use of Common Area for organized recreational activities; provided, however, that the Association rules shall apply equally to all Owners and shall not be inconsistent with this Declaration. A copy of the Association rules as they may from time to time be adopted, amended or repealed shall be mailed or otherwise delivered to each Owner. Upon such mailing or delivery, the Association rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. In the event the Association rules are inconsistent with or less restrictive than any other provisions of this Declaration, the provisions of the Association rules shall be deemed to be superceded by the provisions of this Declaration to the extent of any such inconsistency.

6.5.1.5 Emergency Powers. The power, exercised by the Association or by any person authorized by the Association, to enter upon any portion of the Property (but not inside any building constructed thereon) in the event of any emergency involving illness or potential danger to life or property or when necessary in connection with any maintenance or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owner of such portion of the Property as practicable, and any damage caused thereby shall be repaired by the Association.

6.5.1.6 Licenses, Easements and Rights-of-Way. The power to grant and convey to any third party such licenses, easements and rights-of-way in, on, under and about Common Area as may be necessary or appropriate for the orderly construction of Improvements, maintenance, preservation and enjoyment of the same, and for the preservation of the health, safety, convenience and the welfare of Owners:

6.5.1.6.1 Underground lines, cables, wires, conduits or other devices for the transmission of electricity or electronic signals for lighting, heating, power, telephone, television or other purposes, and the above ground lighting stanchions, meters, and other facilities associated with the provisions of lighting and services;

6.5.1.6.2 Public or private sewers, storm drains, water drains and/or pipes, water supply systems, sprinkling systems, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities; and

6.5.1.6.3 Mailboxes and sidewalk abutments around such mailboxes or any service facility, berm, fencing and landscaping abutting common area, public and private streets or land conveyed for any public or quasi-public purpose including, without limitation, pedestrian and bicycle pathways.

6.5.2 Duties. In addition to duties necessary and proper to carry out the power delegated to the Association by the Articles, Bylaws and the Declaration, without limiting the generality thereof, the Association or its agents, if any, shall have the authority and the obligation to conduct all business affairs of the Association and to perform, without limitation, each of the following duties:

6.5.2.1 Operation and Maintenance of Common Area. Operate, maintain, and otherwise manage or provide for the operation, maintenance and management of Common Area, including the repair and replacement of property damaged or destroyed by casualty loss and including any signs placed at the entrances to, or otherwise in the vicinity of the Property. The Association shall, at Grantor's sole discretion, own and/or operate and/or maintain all properties owned by Grantor which are designated by Grantor for temporary or permanent use by Members of the Association;

6.5.2.2 Reserve Account. Establish and fund a reserve account with a reputable banking institution or savings and loan association or title insurance company authorized to do business in the State of Idaho, which reserve account shall be dedicated to the costs of repair, replacement, maintenance and improvement of Common Area;

6.5.2.3 Tax Returns. Timely file any and all tax return(s) with the appropriate government entity;

6.5.2.4 Maintenance of Berms, Retaining Walls and Fences. Maintain any berms, retaining walls and/or fences within any Common Area;

6.5.2.5 Maintenance of the Water System. The operation and maintenance of the Water System, defined below, contemplated for the Property when and if the Water System is conveyed to the Association. Notwithstanding anything to the contrary herein, the account in connection with the Water System shall be dedicated to the Water System and maintained in an account separate from other Association accounts. The Association shall conduct an unreviewed audit of the Water System once every four (4) years;

6.5.2.6 Taxes and Assessments. Pay all real and personal property taxes and Assessments separately levied against Common Area, or against other portions of the Property owned by the Association. Such taxes and Assessments may be contested or compromised by the Association, provided, however, that such taxes and Assessments are paid or a bond insuring payment is posted prior to the sale or disposition of any property to satisfy the payment of such taxes and Assessments. In addition, the Association shall pay all other federal, State and/or local taxes, including income or corporate taxes levied against the Association in the event that the Association is denied the status of a tax exempt corporation and shall file all applicable federal, state and/or local tax returns whether or not the Association is deemed to be tax exempt;

6.5.2.7 Water and Other Utilities. Acquire, provide and/or pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone and gas and other necessary services for Common Area, and to own and/or manage for the benefit of Hawks Bay all water and water rights, including groundwater and groundwater rights, ditch and ditch rights, and storage and storage rights, and rights to receive water held by the Association, whether such rights are evidenced by license, permit, claim, decree, stock ownership or otherwise;

6.5.2.8 Insurance. Obtain insurance from any reputable insurance company authorized to do business in the State of Idaho, and maintain in effect any insurance policy the Board deems necessary or advisable, and to the extent possible to obtain, including, without limitation the following policies of insurance:

6.5.2.8.1 Fire insurance including those risks embraced by coverage of the type known as the broad form "All Risk" or special extended coverage endorsement on a blanket agreed amount basis for the full insurable replacement value of all Improvements, equipment and fixtures located within Common Area;

6.5.2.8.2 Comprehensive public liability insurance insuring the Board, the Association, Grantor, and their agents and employees, invitees and guests of each of the foregoing against any liability incident to the ownership and/or use of Common Area and the Water System, if such has been conveyed to the Association. Limits on liability of such coverage shall be as follows: Not less than One Million Dollars (\$1,000,000) per person and One Million Dollars (\$1,000,000) per occurrence with respect to personal injury or death, and One Million Dollars (\$1,000,000) per occurrence with respect to property damage;

6.5.2.8.3 Full coverage directors' and officers' liability insurance with a limit of at least Two Hundred Fifty Thousand Dollars (\$250,000);

6.5.2.8.4 Such other insurance, including motor vehicle insurance and worker's compensation insurance, to the extent necessary to comply with all applicable laws, and indemnity, faithful performance, fidelity and/or other bonds as the Board shall deem necessary or required to carry out the Association functions or to insure the Association against loss from malfeasance or dishonesty of any employee or other person charged with the management or possession of the Association funds or other property;

6.5.2.8.5 The Association shall be deemed trustee of the interests of all Owners in connection with any insurance proceeds paid to the Association under such policies, and shall have full power to receive such Owner's interests in such proceeds and to deal therewith; and

6.5.2.8.6 Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the Regular Assessments levied by the Association.

6.5.2.9 Rule Making. Make, establish, promulgate, amend and repeal the Associations rules as the Board shall deem advisable;

6.5.2.10 ACC. Appoint and remove members of the ACC subject to the provisions of this Declaration; and

6.5.2.11 Enforcement of Restrictions and Rules. Perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably advised or necessary to enforce any of the provisions of the Declaration and any and all State or local laws, ordinances, rules and regulations. Also including, without limitation, the recordation of any claim of lien with the Valley County Recorder's Office, as more fully provided herein.

6.6 Annual Meeting. The Association shall hold an annual meeting each year and the first annual meeting shall be held during the month of August of the first calendar year following the first sale of a Lot in the Property. Subsequent regular annual meetings of the Association shall be held as provided in the Bylaws of the Association. Special meetings may be called as provided for in the Bylaws of the Association. Notice of annual or special meetings of the Association shall be delivered to all Members of the Association as provided in the Bylaws of the Association. All meetings shall be held within the Property or as close thereto as practicable at a reasonable place selected by the Board. All Members of the Association are encouraged to attend all annual and special meetings of the Association.

6.7 Budgets and Financial Statements. Financial statements for the Association shall be prepared regularly and, upon request, copies shall be distributed to each Member of the Association as follows:

6.7.1 A pro forma operating statement or budget representing the Association for each fiscal year shall be available for distribution not less than sixty (60) days before the beginning of each fiscal year. The operating statement shall include a schedule of Assessments received and receivable.

6.7.2 Within ninety (90) days after the close of each fiscal year, the Association shall cause to be prepared and available to each Owner, a balance sheet as of the last day of the Association's fiscal year for the Association and annual operating statements reflecting the income and expenditures of the Association for its fiscal last year. Copies of the balance sheet and operating statement shall be available for distribution to each Member within ninety (90) days after the end of each fiscal year.

6.8 Manager. The Association may employ or contract for the services of a professional manager or management company, provided that no such employment or contract shall have a term of more than one (1) year, and each such contract shall be subject to cancellation by the Association up to thirty (30) days notice, with or without cause, and without payment of a termination fee. The professional manager so employed or contracted with shall not have the authority to make expenditures chargeable against the Association except upon specific prior written approval and direction by the Board. The Board shall not be liable for any omission or improper exercise by such a professional manager of any such duty, power or function so delegated by or on behalf of the Board.

6.9 Personal Liability. No Member of any committee of the Association, or any officer or director of the Association, or Grantor, or the manager, if any, shall be personally liable to any Owner, or to any other party including, without limitation, the Association, for any damage, loss or prejudice suffered or claimed on the account of any act, omission, error or negligence of the Association, the Board, the manager, if any, or any officer, director or other representative or employee of the Association, Grantor, or the ACC, provided that such person, upon the basis of such information as may be possessed by such person, has acted in good faith without willful or intentional negligence and/or misconduct.

6.10 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than otherwise might be. Neither the Association, Grantor, nor any successor of Grantor shall in any way be considered insurers or guarantors of security within the Property, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, that the Association, Grantor, and any successor of Grantor are not insurers and that each person using the Property assumes all risks for loss or damage to persons, property, Lots, to Common Area, and to the contents of Lots resulting from acts of third parties.

## ARTICLE VII - DESIGN AND DEVELOPMENT GUIDELINES

7.1 Introduction. The design character of Hawks Bay Subdivision is based upon “good sense” design.

7.2 Primary Goals. Through the use of building masses, roofscapes, walls and site relationships, emphasize the following:

Avoidance of forms foreign to the Donnelly area  
Adaptation to the site in every possible way, including its terrain, its pattern of sunlight and shade, natural vegetation and adjoining structures.

7.3 Design Theme. The architectural theme for Hawks Bay Subdivision has been directed at establishing compatibility between well designed buildings and the natural environment, and utilizing energy conservation applications when possible. Residential areas should blend structures and landscape, respecting natural land forms and existing vegetation.

7.4 Compliance. Compliance to the guidelines will be strictly enforced.

7.5 Definitions. All definitions provided in the Hawks Bay Subdivision Declaration of Protective Covenants, Conditions, and Restrictions (“Declaration”) and any supplemental declaration are incorporated herein by reference. Such definition shall be used in the interpretation and construction of these Design and Development Guidelines. Any term not defined shall have its plain and ordinary meaning.

All single family homes shall be conventional construction methods. No mobile homes, manufactured homes, or snow roofs shall be allowed, unless written approval from the ACC has been obtained.

7.6 Site Planning.

7.6.1 Building siting shall be responsive to existing features of terrain, drainage patterns, rock outcroppings, vegetation, views and sun exposure.

7.6.2 Landscaping and grading for any site shall interface with all adjacent properties. The applicant shall indicate the means of accomplishing this interface in the applicant’s landscape plan.

7.6.3 Preserving specific view corridors is at the discretion of the ACC.

7.6.4 Grading. Grading requirements resulting from development shall be designed to blend into the natural landscape. Cuts and fills should be feathered into the existing terrain, within the property boundary. Retaining walls and curbing should utilize natural materials such as wood timbers, logs, rocks, and textured board formed, or color tinted concrete. Slope of the cut and fill banks should be determined by soil characteristics for the specific site to avoid erosion and promote re-vegetation opportunities, but in any case should be limited to a maximum

of 2:1 slope. Lot owners, or their builder shall apply natural fertilizers, which will restrict nutrient drainage into the lake. A Grading Plan shall be submitted with the Final Design that demonstrates compliance with the CUP, with the Final Plat for the Phase within which the Lot sits, and with Section 3.03.04 (a) of the Valley County Land Use and Development Ordinance.

7.6.5 Maximum and Minimum Square Footage. The maximum square footage for a single family residence is 3,600 square feet until interconnectivity to the water system is completed. The minimum square footage for a single family residence is as follows:

Single story home – 1, 600 square feet of heated livable space;  
Two story home – 2,200 square feet of heated livable space with a minimum of 1,400 square feet on the main floor in Block 2;

Single story home- 1,400 square feet of heated livable space;  
Two story home- 1,800 square feet of heated livable space with a minimum of 1,200 square feet on the main level in Block 1.

7.6.6 Single Family Primary/Secondary Units. All secondary units must comply with Valley County ordinances. The secondary unit can be no more than 25% of the gross living floor area of the primary unit, and in no case can it be more than 750 square feet. It must be appropriate and integral with the architecture of the primary unit. No secondary unit can be constructed without specific written approval by the ACC. No secondary unit can be rented.

7.6.7 Set Backs. Side yard – 7 ½ feet minimum each side. All setbacks are measured at the eave line. Front yard (street side) - 25 foot minimum. Rear yard – 15 foot minimum. All siting must be approved the ACC.

7.6.8 Utilities. All trunk utility lines and pipes are underground. Connections from trunk lines to individual structures must also be underground. Sewage disposal systems shall connect with the central sewage system. No individual septic tanks, leach-field systems, or wells are permitted. Propane tanks shall be placed underground. No septic facility shall be constructed within 100 feet of any well in Lot 20, Block 2 (the “Well Lot”) as noted on the recorded Plat of Hawks Bay Subdivision.

7.6.9 Exterior Mechanical and Electrical Equipment. All outdoor utility tanks, metering devices, transformers and other similar devices shall be concealed from view of public spaces and neighboring properties. No exterior antenna or dish shall be erected without specific written approval of the ACC.

7.6.10 Drainage. Storm drainage shall not connect into the sanitary sewer systems. Surface runoff and runoff from impervious surfaces such as roofs and pavement areas shall be directed to surface water management/storm drain system.

7.6.11 Driveways. Driveways within site boundaries and connecting to the paved portion of any street (including the construction of any culverts, landscaping, maintenance and snow plowing that may be necessary) are the responsibility of the owner. Maximum driveway



grades shall not exceed 5% for the first 20 feet from the roadway, and shall not exceed 10% elsewhere without written approval of the ACC. Driveway and parking surfaces in front of the front line of the main building shall be asphalt, concrete, unit pavers, or cobbles.

7.6.12 Garages. Any home built on a Lot shall include a garage with space for at least two cars.

7.6.13 Building Height Limitations. The building height limitation for a single family residence shall be restricted to 28 feet from finished grade to a point midway between eave and ridge. The maximum roof height should not exceed 35 feet. It is recommended that all homes should be constructed with the finished floor of the first story at least twenty-four inches (24") above the bottom of the borrow swale. Roof pitch: All major roofs shall have pitches not less than 6:12. Major roof forms shall be restricted to gable and hip type roofs. Secondary roof forms attached to major building form by shed roofs with pitches not less than 4:12. Roof materials shall be unit pieces such as slate, flat profile unglazed concrete tiles, fire retardant treated cedar shingles, architectural-grade asphalt shingles or treated copper shingles. Due to the continuing changes in technology, the ACC may expand the list of permissible materials from time to time. Tiles colors shall be brown-gray and should have a weathered appearance. Colored metal roofing may also be used, but must be dark, earth tone colored, and matte finished. If a steel or aluminum metal roof is used, it must be color coated with a color approved by the ACC. It is suggested that cold roof designed be used for roofs over heated interior spaces to avoid ice damage to the roofs and eaves. All roof flashing and appurtenances shall be of a painted or coated color harmonious with the roof and upper wall surfacing. No roof murals will be permitted. Roofs shall have a Class A roof covering or a Class A roof assembly, as provided in the Urban-Wildlands Interface Fire Code. For roof coverings where the profile allows a space between the roof covering and the roof decking, the space at the eave ends shall be fire stopped to preclude entry of flames or embers.

7.6.14 Wood Burning Devices. Wood burning devices shall be limited to one (1) per household.

7.6.15 Lighting. All exterior lighting must comply with Valley County ordinances. Exterior lighting fixtures should provide lighting for safety and protection, and shall not shine into the neighbor's home. No bare bulbs or lamps are allowed, and all light fixtures should have appropriate shields or housing, preferably of indirect light sources.

7.6.16 Chimneys, Flues, and Roof Vents. Chimneys and flues shall be designed in such a manner so as not to cause fumigation of ground level areas or adjacent buildings during down-slope wind conditions. Vents, flues, and spark arresters shall not be exposed galvanized pipe, but rather attempts shall be made to group and conceal them from public view. Enclosing them in forms compatible with the structure can do this. Fire resistant sheetrock installed around the interior of any chimney chase is encouraged. Wood, stucco, concrete, and masonry finished flues are permitted. A flat top is preferred, and a side vent for the flue is recommended. Unfinished, exposed metal or masonry block chimneys shall not be permitted unless part of the overall pleasing architectural style.

7.6.17 Exterior Service and Storage Areas. Areas shall be provided for trash containers, utility tanks, storage of patio furniture, and maintenance and recreational equipment. These areas shall be screened from the view of the public and adjacent property owners. Trash containers shall be inaccessible to wildlife. Walls enclosing these areas shall be compatible with the materials and integral with the form of the residence.

7.6.18 Dog Runs. Fenced dog runs are not permitted without prior ACC review and approval. In any event, chain link enclosures are not permitted. Underground electrical devices are encouraged.

7.6.19 Walls and Fences. Walls and fences have only two acceptable uses at Hawks Bay Subdivision: (a) as a retaining wall; and (b) as a privacy screen. Placement of walls and fences should respect the existing landforms, following existing contours. No fencing is allowed within any rear setback or side setback. Any fence built away from the home (non-privacy screens) must be an approved open rail style fence. The design of these elements should be in scale and harmony with the buildings and their surroundings. The rear property fences bordering the Bureau of Reclamation property will be installed by the Developer and maintained by the homeowners.

7.6.20 Landscape Structures. Landscaping often includes outdoor structures (decks, patios, trellises, gazebos, pagodas, greenhouses, play equipment, basketball standards, and equipment enclosures). These structures frequently detract from the overall appearance of the landscape by adding an element of disorder. All structures should be designed to work as extensions to the house designs rather than freestanding, separate elements. Freestanding elements should be avoided unless there is a compelling reason for such. But in both cases, every effort must be made to give the entire lot a common character befitting of Hawks Bay Subdivision. All exterior items, including compressors, meters, etc. should be screened from street and neighbor's views. Vehicles (including snowmobiles, motorcycles, bikes, golf carts, autos, trucks, boats, etc) must be visually protected from view in an enclosed structure designed to be compatible with the overall building design. All outdoor structures should be devoid of gimmickry and excessive ornamentation. Decks and trellises should be built of stained or treated wood, unless otherwise approved by the ACC in its discretion.

7.6.21 Architectural Control Committee. The ACC will review, approve and/or disapprove submitted plans and specifications regarding style, exterior design, appearance, locations, and compliance with the provisions set forth in these Design and Development Guidelines. The ACC has no authority to review and/or approve any improvement plans and specifications for engineering design or structural engineering and safety, nor for compliance with applicable zoning, building, or other county, state, or federal laws, ordinances, codes or policies. Along with obtaining all necessary approvals from the ACC as set forth in these guidelines, each Owner is obligated to obtain all necessary governmental approvals. Plans and specifications are to be prepared in accordance with all applicable governmental laws and regulations affecting the use of the property and improvements thereon.

7.6.22 Building Permits. The written approval of the Final Design Review documents can be submitted to Valley County, along with any additional Valley County

requirements, for review, comments, approval, and issuance of a building permit. NO SUBMISSION CAN BE MADE TO VALLEY COUNTY WITHOUT FIRST OBTAINING WRITTEN APPROVAL FROM THE ACC. Building permits shall be issued in accordance with the Valley County Building Code Ordinance.

7.6.23 Design Variance Request Procedure. If a requirement set forth in these Guidelines cannot be met, a Variance may be requested. Variances require that a hardship is demonstrated, or that benefit to the community as a whole is the outcome of the variance, or that the variance is consistent with the spirit and character of the Design Guidelines in the sole discretion of the ACC. Mitigation may need to be proposed and permission from adjacent home site Owners may be required, in the discretion of the ACC, which can sometimes slow the approval process. The ACC shall have the option, but not the obligation, to notify other property owners of the Variance request. Requests must be submitted within the standard submittal schedule along with any necessary materials to clearly communicate the request. The regulation from which the Variance is being requested must be identified, and the extent and parameters of the Variance must be clearly defined.

7.6.24 Additions Exterior Remodels and Refinishing. If a structural addition is to be added or the exterior of a structure is to be remodeled any time after Final Release, please contact the ACC for the appropriate submittal process. These changes must be approved by the ACC in writing.

7.6.25 Appeal of ACC Decision. Appeal of denial of ACC action application. If the ACC denies any action application, the applicant may appeal to the ACC for further review and discussion. This may include members of the homeowners association.

7.6.26 Non-Waiver. The approval by the ACC of any plans, drawings, or specifications for any work done or proposed shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing or specification subsequently or additionally submitted for approval. Failure to enforce any provision of these Guidelines shall not constitute a waiver of the same. Moreover, approval granted to a project does not constitute approval of each element within that project. If an element that does not comply with the guidelines is discovered in a future submittal, or during the construction of the same project, modification of the non-compliant element may be required. The ACC, the declarant, or any employee or member thereof may not be held liable for any costs or inconveniences incurred to remedy such a situation. THE BURDEN SHALL BE ON THE OWNER, THE BUILDER AND THE ARCHITECT TO ENSURE THAT THEY HAVE THE CURRENT DESIGN AND DEVELOPMENT GUIDELINES.

7.6.27 Completion of Construction and Active Sites. The contractor shall, in any event, complete all construction of improvements to the project within 12 months after commencing construction, except when such completion is impossible or would result in hardship to the Owner due to labor strikes, fires, national emergencies, or natural calamities. If the contractor fails to comply with the schedule, or if the diligent and earnest pursuit of the completion of the improvement ceases, or if the site is abandoned for a period of one calendar month, or a cumulative period of 4 weeks during and 8-week span, the ACC may, upon the

passage of 60 days after written notification to the owner, proceed to have the exterior of the improvement completed in accordance with the approved plans. The ACC may also remove the improvement and restore the project site to its pre-construction condition to the greatest degree possible. All costs relating to the completion or removal shall be borne and reimbursed to the ACC by the owner, to be secured by a continuing lien of the project site.

7.6.28 Preservation of Property. Because of the delicate nature of the soils and the vegetation that it sustains, the use of, or transit over, any other home site or common area, is prohibited. Similarly, in the interest of preserving as much of the natural landscape as possible, the use of, or transit over, the natural areas of setbacks outside the limits of construction on any home site is also prohibited. Construction personnel must refrain from parking, eating, and depositing rubbish or scrap materials (including concrete washout) on any neighboring home site, tract, or right-of-way, or anywhere outside of the building or paving footprint.

7.6.29 Vehicles and Parking Areas. Construction crews may not park on, or otherwise use, undeveloped portions of project sites or open space. All vehicles should be parked within the lot. During busy construction periods involving multiple trades such that all construction vehicles cannot be confined to the lot, the overflow vehicles may be temporarily parked along the edge of the roadway. Vehicles may park along one side only to allow continual unconstrained access by normal traffic, snow removal equipment, and emergency vehicles such as fire trucks. Vehicles may not park on neighboring home sites, in nearby driveways, open space, or along any street frontage bordering occupied properties. Changing oil or other vehicle maintenance is not allowed. The discharge of any petrochemical substance is strictly forbidden. Vehicles that leak oil must not be brought onto Hawks Bay property.

7.6.30 Material Deliveries. All building materials, equipment, and machinery required to construct a residence on any home site at Hawks Bay Subdivision, must be delivered to and remain within the lot. This includes all building materials, earth-moving equipment, generators, mixer, cranes, and any other equipment or machinery that will remain at Hawks Bay Subdivision overnight. MATERIAL DELIVERY VEHICLES MAY NOT DRIVE ACROSS ADJACENT HOMESITES OR COMMON AREAS TO ACCESS A CONSTRUCTION SITE OR DROP DELIVERIES IN A ROADWAY OR RIGHT-OF-WAY.

7.6.31 Refuse Receptacles and Debris Removal. Owners and Contractors shall clean up all refuse and debris at the end of each day.

7.6.32 Dust and Noise Control. The Contractor is responsible for controlling dust and noise from the construction site, including the removal of dirt and mud from right-of-way daily that is the result of construction activity on the home site.

7.6.33 Temporary Power. Utilize existing power supply sources when available and temporary power generation only when necessary. All temporary power supplies shall be muffled.

7.6.34 Pets. No pets, particularly dogs, may be brought onto the property by anyone other than the Owner. If the Owner brings a pet to the site, (dog, cat, etc.) that animal must be

properly contained within the home site and kept under control at all times. This regulation is strictly enforced.

7.6.35 Bureau of Reclamation Wildlife Area. This area is closed during the nesting season (February 1 – July 1); there is no overnight use or recreational development allowed; no motorized vehicles (except snowmobiles) are allowed in this area; no motorized boating; no discharging of firearms (from March 1 through the start of the hunting season each year).

7.6.36 Invalidation. Invalidation of any one of these covenants by judgment or court order shall not affect any of the other covenants or provisions hereof, all of which shall remain in full force and effect.

7.6.37 Terms. This Declaration, and all covenants, conditions, restrictions, and easements contained herein, shall run with the land described herein and shall be binding upon the parties herein and all successors in title or interest to said real property or any part thereof, until August 19, 2014, unless amended as hereafter provided. After August 19, 2014, said covenants, conditions, restrictions, and easements shall automatically extend for successive periods of ten (10) years unless the Owner (s) of legal title to a majority of Lots within Hawks Bay Subdivision shall terminate said restrictions upon filing of such instrument for record in the office of the Recorder of Valley County, Idaho. Amendments to these restrictions may be made at any time by a majority approval of the Owners of the property within Hawks Bay Subdivision. Where any restrictions, consent, or dedication herein varies from the requirements of the Subdivision or other ordinances of Valley County having jurisdiction and the requirements of the county ordinances relating to subdivision are more restrictive, said more restrictive requirement(s) shall be deemed to be a part thereof as if set forth herein as part of these restrictive covenants. This limitation shall apply in particular to locations, public easements, and ways where the same are particularly required by such ordinance but not set forth herein.

7.6.38 Water Rights Appurtenant to Subdivision Lands. Grantor owns certain water rights which are appurtenant to the Property and which may be utilized in connection with the Water System, defined below. Grantor hereby reserves unto itself any and all water and water rights, including groundwater and groundwater rights, ditch and ditch rights, and storage and storage rights appurtenant to the Property, and accordingly, Owner of any Lot(s) shall have no right, title or interest in any of such water and water rights, including groundwater and groundwater rights, ditch and ditch rights, and storage and storage rights.

## **ARTICLE VIII - RIGHTS TO COMMON AREAS**

8.1 Use of Common Area. Every Owner shall have a right to use each parcel of Common Area, which right shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

8.1.1 The right of the Association holding or controlling such Common Area to levy and increase Assessments, and any and all charges in connection with the Water System, for the construction, protection, maintenance, repair, management and operation of Improvements on Common Area, including the right to Special Assessments;

8.1.2 The right of the Association to authorize the operation and maintenance of the Water System, and to restrict access to such systems except for authorized persons;

8.1.3 The right of the Association to suspend the voting rights and rights of use, or interest in, Common Area by an Owner for any period during which any Assessment or charge against such Owner's Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of the Association rules;

8.1.4 The right of the Association to dedicate or transfer all or any part of Common Area to any public agency, authority or utility or other person as provided further herein;

8.1.5 The right of the Association to prohibit the construction of Improvements on all Common Areas;

8.1.6 The right of the Association to adopt rules regulating the use and enjoyment of the Common Area, including rules restricting use of recreational facilities within the Common Area to occupants of Lots and their guests and rules limiting the number of guests who may use the Common Area;

8.1.7 The right of the Association to permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board. The Association may lease any Common Area to a private club composed of such Owners who use the facility, or to a commercial operator, or to Grantor, or to a city or county parks department, or to any other appropriate body, on such terms and conditions as may be agreed to by the Association. If the Association so agrees in the lease of such facilities, the lessee shall have the right to permit public use upon payment of use fees, which shall not be less than the fees charged to Owners for such use. There is hereby reserved to all authorized users of any portion of the Common Area an easement over the remaining Common Areas of the Association for direct ingress and egress to and from such Common Area being leased, subject to Association rules; and

8.1.8 The Common Area cannot be mortgaged or conveyed without the approval of Owners, excluding Grantor, of at least two-thirds (2/3) of the total voting power in the Association. If ingress or egress to any Lot is through Common Area, any conveyance or encumbrance of Common Area shall be subject to an easement of Owners of such Lots for the purpose of ingress and egress.

8.2 Designation of Common Area. Grantor shall designate and reserve Common Area in the Declaration, supplemental declarations and/or recorded Plats, deeds or other instruments. Without limiting Grantor's authority to designate Common Area, the Common Area lots are identified on the Plat as follows:

Lot 1, Block 1	Landscape Lot
Lot 19, Block 1	Landscape Lot
Lot 20, Block 2	Well Lot (may be transferred to a private water district as noted on the Plat)

8.3 Delegation of Right to Use. Any Owner may delegate, in accordance with the Declaration, such Owner's right of enjoyment to Common Area to the members of such Owner's family in residence, and such Owner's tenants or contract purchasers who reside on such Owner's Lot. As provided above, only the Association shall have the right to delegate the right of enjoyment to Common Area to the general public, and such delegation to the general public shall be for a fee set by the Association.

8.4 Damages. Each Owner shall be fully liable for any damage to any Common Area which may be sustained by reason of the negligence or willful misconduct of the Owner, such Owner's resident tenant or contract purchaser, or such Owner's family or guests, both minor and adult. In the case of joint ownership of a Lot the liability of such Owners shall be joint and several. The cost of correcting such damage shall be Limited Assessment against such Owner(s) Lot(s) and may be collected as provided herein for the collection of other Assessments.

## ARTICLE IX -ASSESSMENTS

9.1 Covenant to Pay Assessments. By acceptance of a deed to any Lot, each Owner of such Lot, thereby covenants and agrees to pay when due all Assessments or charges made by the Association, including all Regular, Special and Limited Assessments and charges made against such Owner pursuant to the provision of this Declaration, or any supplemental declaration.

9.1.1 Assessment Constitutes Lien. Such Assessments and charges together with late charge(s), interest, costs and reasonable attorneys' fees which may be incurred in collecting the same, and shall be a continuing lien upon the property against which each such Assessment or charge is made.

9.1.2 Assessment is Personal Obligation. Each such Assessment, together with late charge(s), interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner beginning with the time when the Assessment falls due. No Owner shall be exempt from such obligation by a waiver of the use and enjoyment of Common Area or by lease or abandonment of such Owner's Lot.

No Owner may exempt such Owner from liability for Assessments, by nonuse of Common Area, abandonment of such Owner's Lot, or any other means. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

9.2 Uniform Rate of Assessment. All Assessments must be fixed at a uniform rate for each Lot.

9.3 Exempt Property. The following property shall be exempt from payment of Regular Assessments and Special Assessments:

- (a) all Common Area;
- (b) any property dedicated to and accepted by any governmental authority or public utility; and
- (c) any property held by a conservation trust or similar nonprofit entity as a conservation easement, except to the extent that any such easement lies within the boundaries of a Lot which is subject to Assessment (in which case the Lot shall not be exempted from Assessment).

9.4 Capitalization of Association. Upon acquisition of record title to a Lot by the first Owner thereof other than Grantor or a builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to One Hundred Fifty Dollars (\$150). This amount shall be in addition to, not in lieu of, the annual Regular Assessment and/or Special Assessment and/or Limited Assessment and shall not be considered an advance payment of such Assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration. Upon the subsequent transfer of each Lot, a transfer fee shall be paid to the Association in an amount equal to Fifty Dollars (\$50).

9.5 Regular Assessments. All Owners are obligated to pay Regular Assessments to the treasurer of the Association on a schedule of payments established by the Board.

9.5.1 Purposes of Regular Assessments. The proceeds from Regular Assessments are to be used for all costs and expenses incurred by the Association, including attorney's fees and other professional fees, for the conduct of the Association affairs, including without limitation the costs and expenses of construction, improvement, protection, maintenance, repair, management and operation of Common Areas, including all Improvements located on such areas owned and/or managed and maintained by the Association (the "Operating Expenses"), and an amount allocated to an adequate reserve fund to be used for repair, replacement, maintenance and improvement to those elements of Common Area, or other property of the Association that must be replaced and maintained on a regular basis (the "Repair Expenses"). The Operating Expenses and the Repair Expenses are collectively referred to herein as the "Expenses."

9.5.2 Computation of Regular Assessments. The Association shall compute the amount of its Expenses on an annual basis. The Board shall compute and levy the amount of Regular Assessments owed by its Members for the first fiscal year within six (6) months following the month in which the closing of the first sale of a Lot occurs in the Property for the purposes of the Association's Regular Assessment ("Initiation Date"). Thereafter, the computation of Regular Assessments by the Association shall take place not less than thirty (30) nor more than sixty (60) days before the beginning of each fiscal year of the Association. The computation of the Regular Assessment for the period from the Initiation Date until the beginning of the next fiscal year shall be reduced by an amount which fairly reflects the fact that such period was less than one (1) year. The Association is specifically authorized to enter into



subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with Grantor or other entities for payment of Expenses.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year. The Regular Assessment shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted expenses, including reserves. In determining the level of Assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Lots subject to Assessment on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to Assessment during the fiscal year.

9.5.3 Amounts Paid by Owners. The Board can require, in its discretion, payment or Regular Assessments to the Association in monthly, quarterly, semi-annual or annual installments. Regardless of the installment schedule adopted by the Board, the Board may bill for Assessments monthly, quarterly, semi-annually or annually, at its sole discretion. The Regular Assessments to be paid by any particular Owner for any given fiscal year shall be computed by multiplying the Association's total advance estimate of Expenses by the fraction produced by dividing the Lots in the Property subject to this Declaration.

#### 9.6 Special Assessments.

9.6.1 Purpose and Procedure. In the event that the Board shall determine that the Regular Assessment for a given calendar year is or will be inadequate to meet the Expenses for any reason, including, without limitation, costs of construction, improvement, protection, maintenance, repair, management and operation of Improvements upon Common Area, attorney's fees and/or litigation costs, other professional fees, or for any other reason, the Board thereof shall determine the approximate amount necessary to defray such Expenses and levy a Special Assessment against the Owners and the Lots which shall be computed in the same manner as Regular Assessments. The Board shall, in its discretion, determine the schedule under which such Special Assessment will be paid.

9.6.2 Consistent Basis of Assessment. Every Special Assessment levied by and for the Association shall be levied and paid upon the same basis as that prescribed for the levying and payment of Regular Assessments for the Association.

9.7 Limited Assessments. Notwithstanding the above provisions with respect to Regular and Special Assessments, the Board shall levy a Limited Assessment against each Member in connection with charges associated with the Water System, as provided further in Article 11, and may levy a Limited Assessment against a Member as a remedy to reimburse the Association for costs incurred in bringing the Member and/or such Member's Lot into compliance with the provisions of the Declaration or for damage caused by the Owner, or any of such Owner's family, representatives or invitees, to any Common Area or any other portion of the Property.

9.8 Notice and Assessment Due Date. Thirty (30) days prior written notice of Regular and Special Assessments shall be sent by the Association to the Owner of every Lot subject thereto, and to any person in possession of such Lot. The due dates for installment payments of Regular Assessments and Special Assessments shall be the first day of each month unless some other due date is established by the Board. Each monthly installment of the Regular Assessment or Special Assessment shall become delinquent if not paid within ten (10) days after due. There may accrue, solely at the Board's discretion, on each delinquent installment payment a late charge equal to ten percent (10%) of the delinquent installment. In addition, there may accrue, solely at the Board's discretion, on each installment payment delinquent for more than twenty (20) days, interest at eighteen percent (18%) per annum calculated from the date of delinquency to and including the date full payment is received by the Association. The Association may bring an action against the delinquent Owner and may foreclose the lien against such Owner's Lot as more fully provided herein.

9.9 Reserve Budget and Capital Contribution. The Board shall annually prepare reserve budgets for general purposes which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Regular Assessments over the budget period.

9.10 Estoppel Certificate. The Association, upon at least twenty (20) days prior written request, shall execute, acknowledge and deliver to the party making such request, a statement in writing stating whether, to the knowledge of the Association, a particular Owner is in default under the provisions of this Declaration, and further stating the dates through which any Assessments have been paid by such Owner. Any such statement delivered pursuant to this Article may be relied upon by any prospective purchaser or mortgagee of Owner's Lot. Reliance on such statement may not extend to any default of such Owner of which the signor of such statement shall have had no actual knowledge.

9.11 Special Notice and Quorum Requirements. Notwithstanding anything to the contrary contained in the Declaration, written notice of any meeting called for the purpose of levying a Special Assessment by the Association, or for the purpose of obtaining a membership vote in connection with an increase in the Regular Assessment shall be sent to all Members of the Association and to any person in possession of a Lot not less than fifteen (15) days nor more than thirty (30) days before such meeting. At the first such meeting called, the presence of voting Members or of proxies entitled to cast sixty percent (60%) to the total votes of the Association shall constitute a quorum. If such quorum is not present, subsequent meetings may be called subject to the same notice requirements, and the required quorum at the subsequent meetings shall be fifty percent (50%) of the quorum required at the preceding meeting. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

## **ARTICLE X - ENFORCEMENT OF ASSESSMENTS; LIENS**

10.1 Right to Enforce. The Association has the right to collect and enforce Association Assessments pursuant to the provisions hereof. Each Owner of a Lot, upon becoming an Owner

of such Lot, shall be deemed to covenant and agree to pay each and every Assessment provided for in this Declaration and agrees to the enforcement of all Assessments in the manner herein specified. In the event an attorney or attorneys are employed for the collection of any Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms, and conditions of this Declaration, each Owner agrees to pay reasonable attorney's fees in addition to any other relief or remedy obtained against such Owner. The Board or its authorized representative(s) may enforce the obligations of Owners to pay such Assessments by commencement and maintenance of a suit at law or in equity to enforce the liens created hereby. A suit to recover a money judgment for an unpaid Assessment shall be maintainable without foreclosing or waiving the lien hereinafter provided.

## 10.2 Assessment Liens.

10.2.1 Creation. There is hereby created a claim of lien on each and every Lot to secure payment of any and all Assessments levied against such Lot pursuant to this Declaration together with interest thereon at the maximum rate permitted by law and all costs of collection which may be paid or incurred by the Association making the Assessment in connection therewith, including reasonable attorney's fees. All sums assessed in accordance with the provisions of this Declaration shall constitute a lien on such respective Lots upon recordation of a claim of lien with the Valley County Recorder's Office. Such lien shall be prior and superior to all other liens or claims created subsequent to the recordation of the notice of delinquency and claim of lien except for tax liens for real property taxes on any Lot and Assessments on any Lot in favor of any municipal or other governmental assessing body which, by law, would be superior thereto.

10.2.2 Claim of Lien. Upon default of any Owner in the payment of any Regular, Special or Limited Assessment issued hereunder, the Association may cause to be recorded in the Valley County Recorder's Office a claim of lien. The claim of lien shall state the amount of such delinquent sums and other authorized charges (including the cost of recording such notice), a sufficient description of the Lot(s) against which the same have been assessed, and the name of the record Owner thereof. Each delinquency shall constitute a separate basis for a notice and claim of lien, but any number of defaults may be included within a single notice and claim of lien. Upon payment to the Association of such delinquent sums and charges in connection therewith or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction of relief of such delinquent sums and charges. The Association may demand and receive the cost of preparing and recording such release before recording the same.

10.3 Method of Foreclosure. Such lien may be foreclosed by appropriate action in court.

10.4 Subordination to Certain Trust Deeds. The lien for the Assessments provided for herein in connection with a given Lot shall not be subordinate to the lien of any deed of trust or mortgage except the lien of a First Mortgage given and made in good faith and for value that is of record as an encumbrance against such Lot prior to the recordation of a claim of lien for the Assessments. Except as expressly provided in this Article, with respect to a first mortgagee who acquires title to a Lot, the sale or transfer of any Lot shall not affect the Assessment lien provided for herein, nor the creation thereof by the recordation of a claim lien, on account of the

Assessments becoming due whether before, on, or after the date of such sale or transfer, nor shall such sale or transfer diminish or defeat the personal obligation of any Owner for delinquent Assessments as provided for in this Declaration.

10.5 Easements of Access. Grantor expressly reserves for the benefit of all the Property reciprocal easements of ingress and egress for all Owners to, from over and across their respective Lots for installation and repair of utility services (including, without limitation, in connection with the Water System), for drainage of water over, across and upon adjacent Lots and Common Areas resulting from the normal use of adjoining Lots and Common Areas, and for necessary construction, maintenance and repair of any Improvement including, without limitation, fencing, retaining walls, lighting facilities, mailboxes and sidewalk abutments, trees, pathways and landscaping. Such easements may be used by Grantor, and be all Owners, their guests, tenants and invitees, residing on or temporarily visiting the Property, for pedestrian walkways, vehicular access and such other purposes reasonable necessary for the use and enjoyment of a Lot or Common Area.

## ARTICLE XI - DOMESTIC WATER

11.1 Water System. Each Lot shall have access to the Water System to be constructed by Grantor and to be owned and operated by Grantor, subject to the provisions of Section 11.4 hereunder. Such Water System may include, without limitation source(s) of water supply (located on well lot(s), including lot 20, block 2, of the Plat, pumps, regulators, pipes and other delivery system equipment and infrastructure, and shall provide water for culinary and other ordinary domestic household use. Each Owner shall pay a one-time Special Assessment to the Association at the time such Lot is transferred from Grantor to the Owner, and such Special Assessment shall be delivered to Grantor by the Association. All such Special Assessments shall be used to partially reimburse Grantor for the construction and development costs in connection with the Water System including, without limitation, administration.

In addition to the foregoing Special Assessment, at the beginning of each calendar year, Grantor shall establish monthly flat-rate charges for on-going Water System use, operation, maintenance and reserves, which charges may be adjusted annually based on actual operation and maintenance expenses and shall include a reasonable reserve amount. The initial fee shall be \$45.79 per month per Water System connection. Such charges shall be assessed through the Association as a portion of the Regular Assessment in connection with each Owner's Lot, which Assessments shall be transferred to Grantor for so long as Grantor owns the Water System. Notwithstanding the foregoing, all Lots shall be metered to measure use of the Water System in connection with each Lot and, if any such meter indicates that an Owner uses significantly more water, , as reasonably compared to the amount of water used by other Lot Owners, Grantor reserves the right to read meters regularly and to charge the Owners accordingly as a Limited Assessment, which Limited Assessment shall be in addition to the portion of the Regular Assessment associated with the Water System. Additionally, if any dispute arises between Lot Owners, which dispute alleges unreasonable water use by another Lot Owner, Grantor shall use the water meters to determine the monthly water volume consumed by such Lot Owners and, if necessary, charge a Limited Assessment to any Lot Owner consuming significantly more water

as reasonably compared to the amount of water used by other Lot Owners. The Grantor may establish a reasonable monthly maximum amount of water allowed for use in connection with each Lot. Any Owner's or non-Owner's use of the Water System shall constitute an agreement to pay the charges and/or Assessments for such use.

Each Lot shall be equipped with approved backflow systems and assemblies. All backflow assemblies installed on any Lot must be listed in the most recent edition of the University of California Foundation for Cross-Connection Control and Hydraulic Research. It shall be the responsibility of each Lot Owner, at such Owner's sole cost and expense, to promptly replace any backflow system and assembly existing on any Lot that is no longer listed on the foregoing list of approved backflow systems and assemblies. Each Owner, at such Owner's sole cost and expense, shall ensure the correct operation of the backflow system and assembly on such Owner's Lot and shall test the functioning of the backflow system and assembly at least annually and report the result of such testing to the operator of the Water System and to the Association or District, as the case may be.

Grantor shall maintain a separate bank account in connection with the Water System and all charges and/or Assessments and reserve funds collected by Grantor relating to the Water System shall be deposited therein, and revenue in excess of paid operation and maintenance costs shall be held in reserve for future capital expenditures. When ownership of the Water System is transferred to the Association or District, as the case may be, Grantor shall transfer such bank account and all funds deposited therein to the Association or District, as applicable. Owners shall have no right, title and/or interest in any water and water rights, including groundwater and groundwater rights, ditch and ditch rights, and storage and storage rights owned by Grantor.

11.2 Easement for Maintenance. The Grantor and authorized members of the Association shall have a permanent easement to go upon the Lots and/or Common Area in Hawks Bay to operate and perform maintenance in connection with the Water System, which operation and maintenance is further described in that certain Operations Manual for Hawks Bay Water System on file with Grantor, the Association and the Idaho Department of Environmental Quality.

11.3 No Separate Water Supply. No separate or individual water supply system, regardless of the proposed use of the water to be delivered by such system, shall be permitted on any Lot unless such system is approved by all government authorities having jurisdiction including, without limitation, the Idaho Department of Environmental Quality, and designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of Grantor, so long as Grantor is the owner of the Water System, and thereafter by the Association or the District, as the case may be. No Owner may disconnect from the Water System without approval by Grantor, so long as Grantor is the owner of the Water System, and thereafter by the Association or the District, as the case may be; provided, however, even if an Owner receives permission to disconnect from the Water System, such Owner shall remain responsible for any and all charges for the Water System in connection with such Owner's Lot.

11.4 Transfer of Water System. The Water System shall be owned by Grantor; provided, however, Grantor shall convey fee simple title to the Water System to the Association or the

North Lake Recreational Sewer and Water District (the "District") following Grantor's receipt of written authorization for such transfer from the Idaho Department of Environmental Quality. In the event the Water System is transferred to the Association or the District, as the case may be, Grantor shall notify the Association or the District, as the case may be, in writing of the transfer and the Association or the District, as the case may be, shall be responsible for the ownership, operation and maintenance of the Water System. When Grantor transfers the Water System to the Association or the District, as the case may be, such transfer shall be free and clear of all encumbrances and liens, except current real property taxes that shall be prorated to the date of such transfer, reservations, covenants, conditions and restrictions then of record including those set forth in this Declaration. When Grantor transfers the Water System to the Association or the District, as the case may be, the Association or the District, as applicable, shall contact the Idaho Department of Water Resources, Western Regional Office, to arrange for any and all water rights in connection with the Water System to be assigned to the Association or the District, as applicable. If the transfer of the Water System to the Association or District, as the case may be, occurs prior to corrosion control treatment evaluation, Grantor shall be responsible for all corrosion control testing and treatment costs. If the Water System is transferred to the Association, and if the Association is contemplating dissolution during any time that the Association owns and operates the Water System, the Association shall contract with the Idaho Department of Environmental Quality, or an entity approved in writing by the Idaho Department of Environmental Quality to own and operate the Water System, prior to the Association's dissolution.

If Grantor does not convey the Water System to the Association or the District, as the case may be, Grantor shall have the right to transfer, sell or convey the Water System to a public or private entity, conditioned only upon approval in writing by the Idaho Department of Environmental Quality and reasonable assurances that the Water System shall be owned, operated and maintained in a manner that shall provide service from the Water System to Owners on a continuing basis with good quality of service that meets all applicable governmental laws, ordinances and regulations. After Grantor has transferred the Water System to the Association or the District, as the case may be, the Association or the District, as applicable, shall have the right to transfer, sell or convey the Water System to a public or private entity, conditioned only upon reasonable assurances that the Water System shall be owned, operated and maintained in a manner that shall provide service from the Water System to Owners on a continuing basis with good quality of service that meets all applicable governmental laws, ordinances and regulations. No transfer of the Water System shall occur until the Idaho Department of Environmental Quality has certified that the existing Water System is in substantial compliance with state laws, regulations and/or rules.

11.5 Protection of Water Supply. Grantor, and following transfer to the Association, the Association, or the District, as the case may be, shall take reasonable measures to protect the wellhead of the Water System located on Lot 20, Block 2, including, without limitation:

11.5.1 No Parking or Chemical Storage. No parking of equipment or vehicles, storage of pesticides, herbicides, fertilizers, petroleum products or other toxic or hazardous materials shall be permitted within a fifty (50) foot radius of the wellhead;

11.5.2 No Petroleum Products. Petroleum products and other chemicals shall not be used on roads within fifty (50) feet of the wellhead;

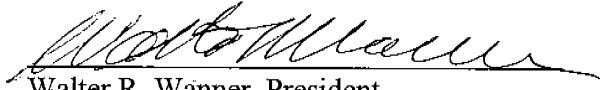
11.5.3 No Standing Water. No standing water or storm water runoff shall be permitted within a fifty (50) foot radius of the wellhead; and

11.5.4 Compliance of Water Facilities. Design and construction of all water facilities in the Subdivision shall be in compliance with all Idaho Department of Environmental Quality and Idaho Department of Water Resources standards established to minimize the potential for groundwater contamination including IDAPA 37.03.09 – “Well Construction Standards,” and IDAPA 58.01-08-550 – “Design Standards for Public Water Systems.”

IN WITNESS WHEREOF, Grantor has caused its hand to be subscribed hereunto this \_\_\_\_ day of \_\_\_\_\_, 2005.

**GRANTOR:**

W & S INVESTMENTS, INC.,

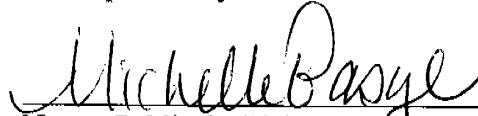
  
Walter R. Wanner, President

STATE OF IDAHO )  
) ss.  
County of ~~Ada~~ Valley )

On this 28<sup>th</sup> day of March, 2005, before the undersigned, a Notary Public in and for the State of Idaho, personally appeared Walter R. Wanner, known to me or identified to me or proved to me on the basis of satisfactory evidence to be the President of W & S Investments, Inc., and to be the person whose name is attached to the forgoing instrument and acknowledged to me that said corporation executed the same.

IN WITNESS WHEREOF, I have hereunto placed my official hand and seal the day and year in this Certificate first above written.



  
Notary Public for Idaho  
Residing at McCall, ID.  
Commission Expires 8/16/06